IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3605 of 2002

with

SPECIAL CIVIL APPLICATION No 10015 to 10059 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARULBEN C YADAV

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3605/2002 & 10015-10036 of 2003

MR VH DESAI for Petitioner No. 1-46

MR KP RAVAL AGP for Respondent No. 1-2

MR GM JOSHI for Respondent No. 3

2. Special Civil Application No.10037 - 10059 of 2003

MR VH DESAI for Petitioner No. 1-46

MR AD OZA AGP for Respondent No. 1-2

MR GM JOSHI for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 24/09/2003

COMMON ORAL JUDGEMENT

RULE. Mr K.P. Raval waives service of Rule on behalf of respondents nos.1 and 2 and Mr Gautam Joshi waives service of Rule on behalf of respondent no.3. With the consent of the parties the matters are taken up for final hearing today.

The petitioners in all these petitions are primary teachers in the institutions which are managed by the Panchayat. The petitioners have challenged the order passed by the Taluka Development Officer by which certain amounts are ordered to be recovered from the pay of the petitioners on account of audit objections and reduction in their pay scale. It seems that in the year 1996 the petitioners were given the benefit of higher pay scale on the basis of completion of nine years of service and accordingly their pay scale was revised. The said benefit continued for some time. However, subsequently, some audit query was raised by the Audit Department and on the basis of the said audit query the Taluka Development Officer passed the impugned order by which the respective petitioner was placed in the lower pay scale by adjusting the increments given to them in between and consequential order of recovery was also passed by the Taluka Development Officer. It is the say of the Department that the petitioners are entitled to be placed in the pay scale prescribed in the revised pay scale vide Resolution dated 20th January, 1998 of the Finance Department. In the affidavit-in-reply filed by the Taluka Development Officer reliance is placed on Rule 41-A of Bombay Civil Service Rules. It is also pointed out on behalf of the respondents that fixation of the pay scale of the petitioners is contrary to the ROP rules as well as on other grounds also and that they were not entitled to opt for a particular date. Since this Court is not deciding the petitions on merits, it is not necessary to refer to all these factual aspects in detail. On behalf of the petitioners it is argued that the order of reduction in the pay scale and recovery of amount is passed without adhering to the principles of natural justice and therefore the same deserves to be set aside. Since this aspect is not in dispute, in my view, these petitions are required to be disposed of on a short ground and are required to be allowed on the ground that the petitioners have not been heard before passing the impugned order and the order is passed contrary to the principles of natural justice. On behalf of the

petitioners a reference is made to the order of the Division Bench, Letters Patent Appeals Nos. 180 of 2003 and 578 of 2000. Relying upon these judgements it is submitted by the learned counsel for the petitioners that no order of recovery or reduction in the pay scale of the petitioners can be passed as the petitioners have not committed any mischief in getting the revised scale. However, as pointed out above, all these questions are not required to be examined at this stage. Instead, the State Government is directed to afford personal hearing to the petitioners and thereafter to pass appropriate orders in connection with the recovery or reduction in the pay scale of the petitioners.

Mr A.D. Oza, learned Government Pleader, vehemently submitted taht since it is an obvious error, the petitioners are not required to be heard. He also submitted that if the benefit given is ex-facie bad, no hearing is required. However, when the petitioners are relying upon the judgement of the Division Bench, it is better that such orders are passed after hearing the petitioners. It is pointed out by the learned AGP Mr Raval that the the concerned Department which is required to give the opportunity of hearing to the petitioners would be the Education Department. The Secretary of the Education Department is, therefore, directed to hear the concerned petitioners and to pass the appropriate order thereafter in accordance with law.

Mr Gautam Joshi, learned advocate appearing for the Taluka Development Officer, has submitted that the Taluka Development Officer, has passed the order in view of the audit objection and in view of the directions given by the higher authorities. He submitted that the Taluka Development Officer may not be appropriate authority to give the hearing because he has merely acted as per the audit objections and audit queries. Under the circumstances, it would be just and appropriate to direct the State Government through the Education Department to hear the concerned petitioners.

It is clarified that this Court has not adjudicated any issues on merits. It is open for the petitioners to rely upon the judgement of Division Bench of this Court, namely, Letters Patent Appeals Nos. 180 of 2003 and 578 of 2000 at the time of personal hearing. It will be open for the petitioners to represent their case through representative if all the petitioners are not in a position to appear before the Secretary. The Secretary, Education Department, is directed to pass appropriate order after hearing the petitioners in the subject matter.

In the aforesaid view of the matter, the order passed at Annexure-C in all these petitions is quashed and set aside. Since at present the order of status quo is in existence, the same shall be maintained till the Secretary passes appropriate order after hearing the petitioners.

It is needless to state that the Secretary will pass the order as aforesaid in accordance with law. If, ultimately, the final order is against the petitioners, the petitioners can challenge the same in accordance with law, if so advised.

All the petitions are accordingly disposed of.

(P. B. Majmudar, J.)
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